



BRIBERY ACT 2010 - SFO POLICY REVIEW UPDATE

On 9 October 2012, the UK Serious Fraud Office (SFO) published new policies on facilitation payments, business expenditure (hospitality) and corporate self-reporting.

While there has been no change in the underlying legal position, the SFO has recently appointed a new Director, Mr David Green CB QC, and has taken the opportunity to publicise that its responsibility lies in the investigation and prosecution of serious and complex fraud, rather than in providing guidance on those parts of the UK Bribery Act (the Act) which are unclear.

The current position can therefore be summarised as follows:


- The SFO is unwilling to provide tailored guidance on bribery and corruption to companies.
- Facilitation payments remain illegal bribes.
- Business expenditure in the form of

hospitality is recognised as an important element of corporate relationships, but is illegal where used to disguise a bribe.

- The SFO continues to encourage companies to self-report if they are made aware of any fraud-related offence.
- Whether or not the SFO will prosecute for a bribe continues to be governed by the two stage Full Code Test in the Code for Crown Prosecutors and other published guidance (see below).

Because the latest guidance on facilitation payments and corporate policy does not change the legal position, companies which are subject to the Act still need to have in place robust procedures for preventing bribery including, in particular, appropriate procedures on facilitation payments, dealing with foreign public officials and corporate hospitality.

What has changed is that it is now clear that the SFO is no longer pursuing a policy of informal



engagement with businesses, thereby closing off one possible source of guidance on the practical ramifications of the Act.

The latest guidance also helpfully reiterates that the SFO will only prosecute if the case is a serious or complex one that falls within the SFO's remit and the SFO concludes that the Full Code Test has been satisfied.

The Full Code Test has two elements:

1. The evidential stage: Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.
2. The public interest stage: Prosecutors must be satisfied that a prosecution is required in the public interest.

While corporate self-reporting is still an option, the SFO has reiterated that *companies are encouraged to take a genuinely proactive approach when any offending is brought to their attention, including self-reporting to the SFO*, and that for a self-report to be taken into consideration as a public interest factor tending against prosecution, it must form part of a “genuinely proactive approach adopted by the corporate management team when the offending

is brought to their notice” and that self-reporting is not a guarantee that a prosecution will not follow.

The new statements serve as a clear message that the SFO's primary role is to investigate and prosecute serious and complex fraud, rather than to provide advice and guidance to companies on their position under the Bribery Act 2010. That reinforces the onus on companies which are subject to the Act to have in place appropriate anti-bribery policies and procedures, training programmes and contractual terms and conditions.

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